

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**AT&T MOBILITY NATIONAL ACCOUNTS LLC**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and AT&T Mobility National Accounts LLC (hereinafter “Vendor”), with its principal place of business at 208 South Akard, Dallas, TX 75202.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-169, on October 14, 2011, for Hardware, Software and Services for Wireless Voice, Data, Pagers and Mobile Satellite Voice. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-169 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C Pricing Index; Exhibit 1 Vendor’s Response to RFO DIR-SDD-TMP-169, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-169, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, then Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

- A.** The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.
- B.** DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees

that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

### **3. Product and Service Offerings**

#### **A. Products**

Wireless Voice and Data Products available under this Contract are all published AT&T National Plans, Government Pooled Plans, Smartphone Data Plans, International Plans and Data Connect Plans. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

#### **B. Services**

Wireless Voice and Data services available under this Contract are all published AT&T National Plans, Government Pooled Plans, Smartphone Data Plans, International Plans and Data Connect Plans. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

### **4. Pricing**

#### **A. Manufacturer's Suggested Retail Price (MSRP)**

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

#### **B. Customer Discount**

The minimum Customer discount from the Vendor for all published AT&T Wireless Voice and Data Service Plans will be 26%.

The minimum Customer discount from the Vendor for all AT&T accessories is 30% off of current retail price.

#### **C. Customer Price**

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement

applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

#### **D. Telecommunications Fees and Surcharges and Taxes**

- (a) The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Contract is the Federal Universal Service Fund charge. Any additional, or updates to, FCC, PUC or other authorized telecommunications taxes, fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representations about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001, Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.
- (b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fee and surcharge on the Services, which Vendor desires to impose and for which DIR Customers do not have an exemption, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto.
- (c) Vendor acknowledges that certain Government Entity Customers are exempt from state sales, use and excise taxes, Section 151.309, Texas Tax Code, and Federal Excise Tax, 26 USC Sections 4253 (i) and (j). Vendor further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State. See Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Vendor. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are assistance organizations, as defined in Section 2175.001,

Texas Government Code or certain private institutions of higher education under Section 2170.004 (5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each such organization directly.

**E. Other Fees**

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all Customers.

**F. Back-billing**

Prices to Customers for Services inadvertently left off previous invoices by the Vendor may be back-billed no more than 120 calendar days for usage. Pursuant to PUC Rule 26.27, a six-month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments. For purposes of this paragraph, a billing Adjustment is as modification or correction of a billing amount or an element of a Service.

**G. DIR Cost Recovery Fee**

The DIR Cost Recovery Fee (CRF) is authorized by Chapter 2170, Texas Government Code, and DIR has the discretion to set the rate of the CRF to recover its costs in accordance with the statute. The initial rate for the CRF is set forth in Section 5 herein. The DIR CRF specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**H. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**I. Tax-Exempt**

As per Section 151.309, Texas Tax Code, certain Government Entity Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Entity Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Assistance organizations may be exempt from the assessment of State sales, use and excise taxes under Section 151.310, Texas Tax Code. Vendor is responsible for determining applicable taxes on assistance organizations. DIR makes no representation with regard to the tax-exempt status of private institutions of higher education, qualified to participate in this Contract pursuant to Section 2170.004(5), Texas Government Code. Vendor must request and receive any exemption certificates that may apply from each assistance organization directly.

**J. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach

transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**K. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Cost Recovery Fee**

**A)** The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for Telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000 shall be \$2,000.

**B)** All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR. Notwithstanding the foregoing, all products and services are to be provided and billed in full compliance with applicable laws and regulations.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Director, Communications Technology Services Division  
With a copy to:  
Attorney, Communications Technology Services Division  
Department of Information Resources  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
Facsimile: (512) 475-4759

If sent to the Vendor:

Tatum Minister  
AT&T Mobility National Accounts LLC

712 East Huntland Drive  
Austin, TX 78752  
Phone: (512) 914-1918  
Facsimile: (210) 222-3602  
Email: tm6230@att.com.com

**7. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

1. **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts;** all references to "administrative fee(s)" are hereby deleted in their entirety.

2. **Appendix A, Section 4.F. Choice of Law** is hereby restated as follows:

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity, nor as a waiver of any Vendor's defenses under Texas law.

3. **Appendix A, Section 7.C. Payments** is hereby restated as follows:

**C. Payments**

Customers eligible under Chapter 2251 shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

Customers who are assistance organizations (as described in the definition of "Customer" in Section 3 to this Appendix A ("Definitions")) will make payment within 30 days after the date of the invoice. Such Customers will reimburse Vendor for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees.

In addition, Vendor may charge such Customers with late payment fees for all other Services, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments. All checks remitted in payment of amounts due hereunder will refer to the invoice number. Restrictive endorsements or other statements on checks are void.

4. **Appendix A, Section 9.A. Indemnification** is hereby restated as follows:

**A. Indemnification**

**1) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY (I) THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. (II) BY CUSTOMER'S LOCAL COUNSEL FOR CUSTOMERS THAT ARE POLITICAL SUBDIVISIONS (INCLUDING COUNTIES, MUNICIPALITIES, OR DISTRICTS) AND (III) BY VENDOR'S LEGAL COUNSEL FOR CUSTOMERS THAT ARE EITHER PRIVATE INSTITUTIONS OF HIGHER EDUCATION OR ASSISTANCE ORGANIZATIONS (AS BOTH ARE DESCRIBED IN THE DEFINITION OF "CUSTOMER" IN THIS APPENDIX A ("DEFINITIONS")). IN ADDITION, IN CASES WHERE EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL IS COORDINATING THE DEFENSE (I) OR LOCAL COUNSEL IS COORDINATING THE DEFENSE, VENDOR WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT VENDOR'S EXPENSE, BUT VENDOR AGREES NOT TO INTERFERE WITH EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL'S OR LOCAL COUNSEL'S (AS THE CASE MAY BE) MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. IN CASES WHERE VENDOR IS COORDINATING THE DEFENSE, THE AFFECTED CUSTOMER WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT CUSTOMER'S EXPENSE, BUT CUSTOMER AGREES NOT TO INTERFERE WITH VENDOR'S MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. NOTWITHSTANDING THE FOREGOING, VENDOR DOES NOT WAIVE ANY DEFENSES UNDER TEXAS LAW.

## **2) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND CUSTOMERS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

## **3) Independent Contractor**

**VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.**

5. **Appendix A, Section 9.K. Limitation of Liability** is hereby restated as follows:

### **K. Limitation of Liability.**

(a) For any claim or cause of action arising under or related to the Contract, neither Party will be liable to the other Party for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

(b) EACH PARTY'S LIABILITY TO THE OTHER UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL VALUE OF VENDOR'S INVOICES TO DIR IN THE TWELVE (12) MONTHS PRECEDING THE FILING OF A LAWSUIT

(c) Exceptions to Limitations of Liability. This *Section* will not apply with respect to:

(1) Losses occasioned by the fraud (except as rendered inapplicable to the State, DIR and all state agency and local government Customers), willful misconduct, or gross negligence of a Vendor.



(2) Losses that are the subject of Indemnification under this CONTRACT.

(3) Losses occasioned by any breach of a Party's obligations under the Confidentiality and Disclosure provisions of this Contract.

6. **Appendix A, Section 9.L. Overcharges** is hereby restated as follows:

**L. Overcharges**

Vendor hereby assigns to DIR any and all claims for overcharges associated with products and services provided to DIR and Customers under this Contract arising under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* (1973), as amended, and the antitrust laws of the State, Sections 15.01, *et seq.*, Texas Business & Commerce Code.

7. **Appendix A, Section 9.S. Deceptive Trade Practices; Unfair Business Practices** is hereby restated as follows:

**S. Deceptive Trade Practices; Unfair Business Practices**

Vendor represents and warrants that to the best of its knowledge and belief neither Vendor nor any of its Subcontractors has within the last 3 years been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or it has no officers who have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations.

8. **Appendix A, Section 10.A. Enforcement of Contract and Dispute Resolution** is hereby restated as follows:

**A. Enforcement of Contract and Dispute Resolution**

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding any such Dispute, the Vendor must continue to perform the Services in compliance with the terms of this Contract pending resolution of Disputes so long as all undisputed amounts continue to be paid to Vendor.

9. **Appendix A, Section 10.C. Force Majeure** is hereby restated as follows:

**C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract except for payment obligations for services already rendered for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

This Contract is executed to be effective as of the date of last signature.

**AT&T Mobility National Accounts LLC**

**Authorized By: Signature on File**

**Name: Roland Saenz**

**Title: Director of Contracts**

**Date: 4-11-2012**

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By: Signature on File**

**Name: Carl Marsh**

**Title: Chief Operating Officer**

**Date: 4/12/12**

**Legal: Signature on File**